

IN THE IOWA DISTRICT COURT FOR JOHNSON COUNTY

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STATE OF IOWA,	)	
Plaintiff,	)	No. CVCV080344
	)	
vs.	)	
	)	
JASON BESLER,	)	REPLY IN SUPPORT OF
Defendant.	)	APPLICATION TO FILE A
	)	PETITION FOR WRIT OF
	)	QUO WARRANTO

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COMES NOW the State of Iowa, through Gary Dickey, and in reply to Defendant Jason Besler's resistance to his Application to File a Petition for Write of Quo Warranto states as follows:

**I. THE STATE OF IOWA HAS STANDING TO BRING THE QUO WARRANTO ACTION AGAINST BESLER**

Besler asserts that Dickey does not have standing to bring a quo warranto. Yet, matter pending before the court is whether to grant leave to allow Dickey to bring a civil action in the nature of quo warranto in the name of the state. At this pre-litigation stage, the only issue is whether the prerequisites for a citizen-prosecuted quo warranto action have been satisfied. Here, there is no dispute that the county attorney and Iowa Attorney General have declined to prosecute the matter. Accordingly, the Court should grant leave to file the civil action. The State of Iowa can then file a formal petition to which Besler can file a pre-answer motion to dismiss on the basis of standing. To assert that "Dickey has not alleged *any* facts suggesting that he has a specific personal interest in Judge Besler's appointment" is a little unfair, therefore, considering that State of Iowa has not even filed its Petition. (Besler's Resistance at 4).

Nonetheless, if the Court wants to reach the standing issue now, it will have no problem dispensing with it on multiple grounds. First, Besler's argument overlooks that

under the Iowa Rules of Civil Procedure, the quo warranto action is “brought in the name of the state” against him. Iowa R. Civ. P. 1.1301. Dickey merely serves as the prosecutor because the Johnson County Attorney and Iowa Attorney General have declined to bring the action. *Id.* 1.1302(3) (“the citizen may bring the action and prosecute it to completion”). In this regard, the real party at interest is the State of Iowa; not Dickey. It is no different than a county attorney who prosecutes civil and criminal matters in the name of the State of Iowa. *See* Iowa Code § 331.756(1), (2), (5). If Besler’s standing argument is correct, then a county attorney and the Iowa Attorney General could not bring a quo warranto action on behalf of the State of Iowa against an officeholder unless they had been personally injuriously affected. The fallacy inherent in the mere recitation of Besler’s legal argument is sufficient to defeat it.

Even if Dickey is the real party at interest, the quo warranto rules confers “any citizen of the state” with standing to bring a “civil action in the nature of quo warranto.” Iowa Rs. Civ. P. 1.1301, 1.1302(2). The express grant of standing eliminates the prudential standing requirements. *Raines v. Byrd*, 521 U.S. 811, 820 n.3 (1997). For this reason, the case cited by Besler, *State ex rel. Independent Sch. Dist. Of Olin v. Hall*, 190 Iowa 1283, 181 N.W. 633 (1921), is inapposite. In *Hall*, the defendants claimed that the defendants did not have authority to act as school officers. *Id.* at 634-35. On appeal the defendants asserted that school district lacked standing because it was “not a citizen of the state” as required by the Iowa Code to institute a quo warranto action. *Id.* at 635. The Court found that standing was not an issue because other persons named in the application were “authorized to bring the suit as relators and parties plaintiffs.” *Id.* Thus, *Hall* involved statutory standing; not the constitutional standing doctrine. Here, there is no dispute that Dickey is a citizen of the state.

Third, Dickey has standing by virtue of the fact that he is an attorney with cases pending in the Sixth Judicial District.<sup>1</sup> In this way, he is subject to the jurisdiction of Besler in a way that the general public is not. And, if Besler lacks constitutional authority as alleged in the application, then Dickey has suffered an injury different from a member of the public. In the very least, he is at risk of injury—at which point the issue becomes one of ripeness rather than standing.

Fourth, Dickey has standing as a taxpayer. The “well-established rule” is that “a taxpayer may maintain an action in his own name to prevent unlawful acts by public officers which would ‘increase the amount of taxes he is required to pay, or diminish a fund to which he has contributed.’” *Id.* at 865 (citing *Polk County v. District Court*, 133 Iowa 710, 715, 110 N.W. 1054, 1055 (1907))(emphasis added). Besler’s salary as a district court judge comes from the general fund to which Dickey has contributed with his state income taxes. Iowa Code § 602.1302. Thus, the allegation that Besler’s appointment was invalid is sufficient to meet the test for taxpayer standing because payment of his salary has “diminished a fund to which [Dickey has] contributed.” *Alons v. Iowa Dist. Ct.*, 698 N.W.2d 858, 864 (Iowa 2005).

Lastly, the standing requirement should be excused because this case involves a question of great public importance and interest in our system of government. In *Godfrey v. State*, 752 N.W.2d 413 (Iowa 2008), the Iowa Supreme Court explained that because the standing requirement is not required under the Iowa Constitution, the doctrine includes “a public-policy exception” to “resolve certain questions of great public importance and interest in our system of government.” *Id.* at 425. The exception applies when (1) “litigants are true adversaries;” (2) the “people most concerned with an issue are in fact the litigants to the

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<sup>1</sup> The Court can take judicial notice of Dickey’s appearance of counsel of record in *Estate of Lowell Paustian*, 06861 ESPR005759 (Tama County). Iowa R. Evid. 5.201.

issue;” and (3) “a real, concrete case exists to enable the court to feel, sense, and properly weight the actual consequences of its decision.” *Id.* All three considerations are present in this case. On the whole, this case presents an issue of “great public importance” that warrants a waiver of the requirement of standing. *Id.* at 428.

### CONCLUSION

WHEREFORE the State of Iowa, through the undersigned, respectfully requests this Court enter an order granting leave to file a civil action in the nature of quo warranto against Jason Besler without the requirement of bond.<sup>2</sup>

DATED this 16th day of January 2019.



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<sup>2</sup> Bond is limited to an amount necessary for “costs.” Iowa R. Civ. P. 1.1301. Plaintiff will pay the filing fee. No expert witnesses will be necessary. Iowa Code § 622.72. Because exhibits are filed electronically by EDMS, copy costs will not be an issue. *Id.* § 625.6. And, the State proposes to “proceed on a stipulated record.” (Besler Resistance at 9). Besler has not identified any costs for which bond is necessary.